



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## ZONING BOARD OF ADJUSTMENT MEETING MINUTES

Wednesday, October 6, 2016  
6:30 PM

**MEMBERS PRESENT:** Douglas W. Lyon (Chair), W. Michael Todd, Vahan Sarkisian, Cheryl Devoe, Frank Anzalone, Ann Bedard, Jerry Coogan (Alt.), and Paul Vance (Alt.)

**MEMBERS ABSENT:** Katharine Fischer (Alt.).

**STAFF PRESENT:** Lucy St. John, Planning and Zoning Administrator

**OTHERS PRESENT:** Robert & Debra Berube (owner/applicant); Erin Darrow (Engineer, Right Angle Engineering); Penny Mellish (Mellish Construction & Internal Design); Attorney Susan Hankin-Birke for the New London Barn Playhouse (McSwinery Law Firm); Milena Zuccotti (Manager/ Director New London Barn Playhouse); Keith Coughlin (Artistic Director New London Barn Playhouse); John Woodward (abutter); Peggy & Steve Theroux (abutters); Marcia Goulart (abutter); Jody Cooper- Rubin and Tom Rubin (abutters); Tom Koehler (abutter); Wesley & Nina Royce (owners/applicant); Chris Leister, for Royce; Clayton E. Platt (NH Licensed Land Surveyor); Pam Perkins & Bo Quackenbos (owner/applicant); John Kiernan Jr. (Page Road); Tom Little (abutter); Erica McCullough (abutter); Deb Langner, Town Health Officer; Mary Shain (abutter); Attorney Bruce Marshall of D'Amante Couser Pellerin & Associates of Concord, NH and Dan Schneider.

**Call to Order:** Chair Lyon called the meeting to order at 6:32 pm.

**Roll Call:** Chair Lyon called the roll.

### **Approval of Minutes**

**IT WAS MOVED (W. Michael Todd) AND SECONDED (Cheryl Devoe) to approve the minutes of August 22, 2016, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.**

### **Berube Variance Application**

Chair Lyon noted that the five voting members for the Berube application will be: W. Michael Todd, Cheryl Devoe, Vahan Sarkisian, Ann Bedard and Jerry Coogan. Chair Douglas Lyon, an abutter, recused himself from this session. W. Michael Todd, would Chair the meeting for this application.

Acting Chair Todd, explained that a variance was recently granted for this property and due to new circumstances and ownership the previous variance was not acted upon, and thus this would be de nova, treated as a new application. Frank Anzalone commented that some site work has been started. Chair Todd noted that the site work was begun but ceased when they realized changes would be needed and they applied for a new variance.

- **Berube, Debra & Robert (formerly Sherman Barrett property) Variance application.** Located at 36 Shaker Road. Tax Map 098-017-000. Property zoned Agricultural and Rural Residential (ARR). Variances requested to Article XXII, Streams Conservation Overlay District, (D), Natural Woodland buffer and (E). Prohibited Uses. A variance was approved for the site in February 2016. The variance specified that the house and site layout must be exactly as shown on the plan titled Individual Sewage Disposal System (ISDS) plan prepared for Sherman Barrett by Pierre Bedard dated December 3, 2015. New owners want to build a house with a different configuration, install a smaller septic system and reduce the amount of fill needed for site grading.

Erin Darrow, Engineer presented the application. She explained that the new owners wanted a different house footprint, which would require less fill; that a new septic system plan was approved with a pump system, substantially reducing the amount of fill and impact; and thusly reducing the cost of construction. She provided additional detail, as outline in the plan noting:

- The fill needed for the old plan was approximately 500 cubic feet as compared to the proposed revised plan of approximately 350 cubic feet.
- New technology for septic system designed by Presby that uses a significantly smaller septic foot print. The previous septic approval was for a gravity fed system, the new septic will be placed at a lower elevation, and thus is pump system. Presby Systems are permitted by the State and are technologically sound systems.
- The effluence disposal area is approximately 30 feet further away from wetlands vs the old plan, and no impact to groundwater.
- The structure is closer to the rear, however, the fill is further away from wetlands area. The base of the fill line is 55 feet with the steep of the slope being two feet less than before.
- The new rear yard is 76 feet from the rear of the building
- There has not been any clearing near the stream and no additional disturbance will be made
- The septic is approximately 3 feet further away from the neighbors than was shown on the previously approved septic plan, noting the Presby Septic System is a better, smaller and less impacting to the environment.

The house is laid out to have minimal impact to the neighbors. It is a modest size house that will fit with the other houses in the neighborhood. The biggest concern of runoff water has been greatly minimized with the new system. It is an existing lot of record, and the property could not be used as it was intended without a variance. It was sold to be constructed as a single family house. Granting this variance will allow for reasonable use and enjoyment of the property.

#### Board Questions/Concerns/Comments

- ✓ Septic System -Distance of the effluent disposal area from the wetland, proximity of the septic system to any neighbors, that the new septic system is highly efficient, at a lower elevation (less fill), the siting of the house in more in keeping with the elevation of other houses in the neighborhood and there hasn't been any disturbance to the stream or the wetlands.
- ✓ The setbacks were discussed noting increased side, reduced rear and same front setbacks.
- ✓ Ask about the conditions of the previous approval. Ms. St. John read the Notice of Decision from the February meeting. Per the plan, the base of the fill line to not be less than 55 feet from the back property line and the distance from the back of the house to the back property line be no less than 85 feet.

Public Hearing opened. Mary Shain, an abutter was acknowledged. Public hearing closed.

#### Motion

**IT WAS MOVED (Cheryl Devoe) AND SECONDED (Jerry Coogan) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.**

The Board discussed and reviewed the responses of each of five variance criteria as noted in the application and detailed explained by the engineer. They concurred that there is a hardship, and what is proposed is an improvement to the previous approval, property values will not be negatively affected but rather the new house will fit nicely into the neighborhood. They concurred that all five (5) variance criteria have been met.

## **Motion**

**IT WAS MOVED (Vahan Sarkisian) AND SECONDED (Ann Bedard) to grant the variance with following conditions:**

- 1. The fill line be not less than 55' from the back property line;**
- 2. The distance from of the back of the house to the back property line be not less than 76';**
- 3. All other dimensions and the house be positioned on the site as shown on the plan titled - Site Plan New House Construction Zoning Variance Plan dated September 20, 2016 as submitted with the variance application;**
- 4. The variance remains valid for only two (2) years from the date of approval and construction of the house and site improvements shown on said plan shall be completed within that timeframe;**
- 5. The Notice of Decision shall be recorded at the Merrimack County Registry of Deeds (MCRD). THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Lyon noted the five voting members for the New London Barn Playhouse (NHBP) would be: Chair Douglas Lyon, W. Michael Todd, Cheryl Devoe, Ann Bedard, and Paul Vance. Vahan Sarkisian, a board member of the NLBP, recused himself and sat in the audience.

- **New London Barn Playhouse Variance application.** Located at 84 & 88 Main Street. Tax Map 073-042-000. Zoned Residential. Variance requested to Article XX- Nonconforming, Section B (5) (b) (2), to permit alteration to a legal non- conforming structure, known as the “Red House” resulting in a square footage increase in excess of 50%.

Attorney Susan Hankin-Birke presented the application. She noted that the NLBP Managing Director and Artistic Director are in the audience, and that Tom DeMille, President of the NHBP was not able to attend this evening.

Showing a color rendering she provided an overview of the existing buildings on the site, their current uses and the location and uses of the proposed new buildings. She noted this is a schematic rendering, not to scale. The plans submitted regarding the building were prepared by Paul Snow. She provided an historical overview of the NLBP operations noting the barn was built in about the 1820's and the operations of the playhouse on the site predate the Zoning Ordinance. She noted that the property was previously zoned Commercial and was rezoned to Residential in March 1969, it would had been a legal use, but now is considered a nonconforming use. She explained that the current layout of the buildings on the site and the needs of the theatre operation are disjointed and not an effective or safe way to run the playhouse. Sets are built outside, the set crew is subject to elements of the weather which may change quickly, space between the two buildings is over utilized, and this is disruptive to the operations of the theatre. The proposed change will have a positive effect on the theatrical operations compared to present operations that are mostly happening outside. She noted that when one showing is playing, they are also rehearsing for the next show. Space is needed. The theatre will still run from June to Labor Day, and no additional seating is proposed. She explained that there are two different way to examine the issue- has the use of the property really changed or are the uses already being conducted on the site (actually outside, for example) and how is this different. She noted the following:

- ✓ Encompassing the theatrical operation inside vs outside to limit disturbance to the neighbors
- ✓ There is not enough room for the rehearsals
- ✓ No additional seats are being added
- ✓ Relocating the bathrooms for access and concessions
- ✓ More room for costumes, sets and rehearsals
- ✓ Building of sets will be built in basement vs outdoors
- ✓ Building changes do not constitute a change
- ✓ Referencing Ordinance, Article XX, B, (5, b. 2) regarding Substantial Improvements, Restoration, Reconstruction and or Replacement of Legal Nonconforming Buildings or Structures

- ✓ Existing building square footage vs new
- ✓ The use is the same, just the dimensions have changed
- ✓ Squaring off the parking lot and striping it.
- ✓ References the case Hampton vs Bruce – new game equals a change in use. Noting what is proposed is merely a different manner on how the site is already being used.
- ✓ Provided dimensions on the existing and proposed building space.

#### Board Questions/Comments

- ✓ Substantial improvements- need additional details on square footage and the specific changes over years to the structures (including square footage information).
- ✓ Two major issues- expansion of nonconforming use and expansion of nonconforming structure
- ✓ Location of the current structures- How are the buildings non-conforming, use, what setbacks (part of site is on the corner lot, and front setback, and side setbacks)- need more details on actual distances as the plan submitted is just a rendering, not a surveyed plan.
- ✓ The activities described do not constitute a change in use but the expansion of those activities into a new structure seems to be not in conformity with article 5b.2. What constitutes a change in use? Nonconforming use that reflects the natural expansion and growth of trade does not substantially change the uses.
- ✓ Is it realistic to think this site will ever convert back to a residential use in the future, noting other commercial uses in the near vicinity, lots of anomalies along Main Street?
- ✓ Chair referenced the case of NH Herley vs Town of Hollis. The Supreme Court has permitted the expansion in volume for a nonconforming use but never permitted an expansion of nonconforming use that involves more than internal expansion of a business with in a preexisting structure.
- ✓ Flying Goose referenced, as this building and site has changed over the year and there are nonconforming issues. Chair Lyon noted need to address each case on a case by case basis.
- ✓ Ultimate goal of addressing nonconformity issues is to bring into conformity.

#### **Public Hearing Opened**

Attorney Bruce Marshall – Stated he is there on behalf of Attorney Raymond D’Amante (D’Amante Couser Pellerin & Associates) to represent concerned citizens, one is an abutter, who want to remain anonymous. He said, they are supportive but have concerns about the proposal.

The Board then discussed, if he has the right to provide testimony on behalf of an abutter/concerned citizens, if he has not identified who the abutter or concerned citizens are and if their testimony is relevant to this application.

Attorney Bruce Marshall was specifically asked to identify the abutter and others he is representing. He said he didn’t need to, attorney/client privileges, and he referred to the language in the Public Hearing notice, “All abutters and other interested parties may attend and or submit written comments.”

The Board then discussed if he should be able to speak on behalf of those who want to remain anonymous. Some members expressed that they didn’t think he should and other expressed he should be able to speak, noting there is a definition for abutter in the RSAs. The Board then allowed him to speak, at this time.

Attorney Marshall then stated that h agrees with the Herley vs. Town of Hollis case. He also referenced that there was a case of the Town of New London vs. New London Zoning Board of Adjustment. He said the ultimate purpose of the zoning regulations is to bring nonconforming uses to conformity completely and rapidly as possible. He referenced Article XX, (A. 2.) regarding any legal nonconforming use shall not be expanded. He stated that the use is expanding, and they are not just replacing, they are increasing the building footprint. He noted they are also concerned about parking, traffic and safety issues. He explained details of his professional career noting he is a licensed civil engineer, worked for the NH Department of Transportation for 12 years, and was an Assistant to the NH Attorney General.

The Board noted that this plan would need Planning Board approval, there are safety concerns, this is a residential neighborhood and State Fire and Safety Codes would need to be addressed.

John Woodward – He grew up two houses down from Barn. He mentioned two “jewels” of the community Charlie and Bruce. He said the Barn is one of the jewels in this community. He spoke to the 1969 zoning and explained that Main Street was a commercial area with many businesses around the Barn, including Homan’s Corner, a greenhouse, William P. Clough property, garden and real estate offices. He stated he would like them to install air conditioning. At the end of the meeting, he submitted a letter, dated Oct 6, 2016 asking that the new proposal rehearsal area be equipped with some form of cooling unit so that any /all operable windows are closed after 6pm (dinner bell).

Peggy Theroux – Stated that she is a native, and seconded what John Woodward stated. She is concerned about setbacks, lights, sound, parking, drainage, deliveries and privacy.

Steve Theroux – Asked if changes are proposed to the parking and if the Planning Board would review the plan per the Site Plan Review Regulations.

Marcia Goulart – Commented she agreed with what John Woodward stated. Agrees that the Barn is a jewel. Previously lived in Boston but has lived here 20 yrs. Concerned about parking, particularly parking in the front. She noted that when Norman Ledger was involved in the Barn, not much of the activity was outside. She asked what has changed in the theatre operation to require more outside use, why is there so much activity in the “alley” space between the two existing buildings. Also, what will prevent them from using outside space in good weather even if plan is approved?

Jody Cooper-Vernon – Stated that she and her husband live across the street. They love the Barn. Her son was involved in the Barn and she has served as a mentor for an acting intern. The only problem she sees is the noise from building sets at the early hours of 4 am, and that the set builders have to move “stuff” fast if a storm comes in. She recognized that there are parking issues. They love to hear the singing. She stated that the Barn is a community jewel, it brings people to town, promotes commerce, and she want the Barn to stay.

Dan Schneider – Stated he is on the Barn Playhouse Board and Vice Chairman of Sunapee Zoning Board, and understand the issues the ZBA has to address. He said the parking won’t change and the number of seats in the theatre will remain the same. He noted that it is an increase in the use, but the activities are the same, essentially this is about addressing the dimensional controls, they are not getting more nonconforming. He believes this project is in the best interest of the community. The change of use is because a new structure does not violate any of your dimensional controls. This is in the best interest of the community.

Tom Koehler – Stated he is concerned about drainage (runoff) from the parking area. He asked if they were expanding the parking lot. He also noted that there is a catch basin behind Grace’s house, and is concerned about the location and problems such as mosquitos.

### Motion

**IT WAS MOVED (Michael Todd) AND SECONDED (Paul Vance) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.**

### Board Discussion

- ✓ Need to address “use” issue and “building/structure” issue (expansion)
- ✓ Need clear and concise measurements of the building, lot, show setback and all structure. Has an architect or surveyor prepared the plans?
- ✓ Want to have details on prior expansion of the building since 1969, square footage, and use of space.
- ✓ If Barn has considered other designs for the site and or building expansion.
- ✓ Which buildings meet the setback

After asking a few questions of the board members, the petitioner withdrew the application and will resubmit another application.

- **Royce, Nina and Wesley Variance application. Property located at 1590 Little Sunapee Road. Tax Map 030-019-000. Property zoned Residential (R-2) and located in the Shoreland Overlay District. Variances requested to Article V, Residential District, C. Yard Requirements (C.2). Variance requested to permit construction of a portion of a residential garage within a portion of the side yard setback (required setback 20 ft. minimum, 50 ft. aggregate).** Public Hearing continued from August 22, 2016 meeting.

Wesley Royce, owner explained that since the last meeting he had considered other design options. He has come up with a solution, since working with Chris Leister. He explained that he is withdrawing his application tonight as he found a way to situate the house/garage so he doesn't need a variance. The Board didn't act or review the information the owner briefly presented on their laptop, as the application was withdrawn.

Chair Lyon noted that the five voting members for SJAP application would be: Chair Lyon, W. Michael Todd, Cheryl Devoe, Vahan Sarkisian and Ann Bedard.

- **SJAP LLC, Pam Perkins Variance application. Located at 11 Dixie Lane. Tax Map 084-029-000.** Property located in Residential (R-1 and R-2) zone (parcel split by the two zoning districts). Variances requested to Article IV, Establishment of Districts and District Regulations (D) Lots with Overlapping Zone Districts (creating new lot) and Article XIII, Wetland Conservation Overlay District, K. Variance requested as the Zoning Ordinance requires a lot in two zones to comply with the requirements of the more restrictive zone.

Clayton Platt, surveyor presented the application. He explained the lots were created in the 1960s, merged, and zoning changes now have the lots in two zoning districts (split zone). He presented, two options identified as Option 1 and Option 2. He noted the density requirements stay the same. He explained that Option 1 is requested and then reviewed the details included in the application for the five variance criteria.

Board Discussion: The Board noted that some corrections are needed to the figures included, regarding wetland/uplands acres.

### **Public Hearing Opened**

Tom Little – Stated he supports Option I, as it would align the lot dimensions similar to other properties on Dixie Lane, it more appropriate and consistent use for the neighborhood.

Erica McCullough – When you split the lot is it making it a buildable lot? She noted that there is a stream that runs through their lot to hers. Where can you build on that lot with all the wetlands? She showed, using the maps, the drainage and wetlands that she has witnessed and wanted to know why it was not shown on the map. She disputes the drawings shown because seasonally it is wetter.

### Board Questions/Comments

- ✓ Need to correct total acreage, wetland acreage and upland acreage figures.
- ✓ Which of the options does the owner want?
- ✓ Would either option make the house/or deck nonconforming?
- ✓ Zoning District requirements for R-1 district vs R-2 district, bisections and zoning requirements
- ✓ With deck, it will not meet rear yard requirements
- ✓ How are wetlands mapped, and is it typical to have land that is wet that is not considered wetlands and is typical to have a stream that is wet that is not considered wetlands on a map. Mr. Platt explained how they map the wetlands.

- ✓ Town wetland/streams map reviewed, compared to wetlands shown on the plan, noting Town maps need clarification and do not show all wetlands in town. Stamp of a certified wetland scientist needed.
- ✓ Abutter concerns about drainage and wetland areas, more information needed.

Chair asked informally if anyone has an objection to the testimony of the five criteria. There were none. He asked for a motion to approve option 1 after consideration and approval of all the five criteria for a variance.

### **Motion**

**IT WAS MOVED (Michael Todd) AND SECONDED (Cheryl Devoe) to grant the variance as shown on the plan labeled as Option 1 with the following conditions:**

- 1. The plan be stamped and signed by a NH certified wetland scientist;**
- 2. The acres figures corrected on the plan;**
- 3. The wetland acreage be deducted from the total lot acres to meet the two (2) acre minimum lot size. THE MOTION WAS APPROVED UNANIMOUSLY.**

### **Other Business**

- ✓ Discussion on meeting calendar: Ms. St. John reminded the Board of the need to have a discussion on establishing set meeting dates for ZBA meetings. This will be included on the next agenda.
- ✓ Municipal Law Lecture Series: Ms. St. John reminded Board member of the on-going Municipal Law Lecture Series workshops.
- ✓ As-Built plan: Ms. St. John referred to the As-Built plans submitted for the Wustrow property, per the ZBA approval of Sept 14, 2015.

### **Motion to Adjourn**

**IT WAS MOVED (Paul Vance) AND SECONDED (Frank Anzalone) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.**

Meeting adjourned at 9:15pm.

Respectfully submitted,

Dianne Richtmyer, Recording Secretary  
Town of New London